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No. 86-876

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1986

STAR-KIST FOODS, INC.,
a California corporation,
Petitioner,

vs.

COUNTY OF LOS ANGELES, CITY OF LOS ANGELES
AND CITY OF LONG BEACH,
Respondents.

REPLY TO OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

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I.

ARGUMENT

Considering the dramatic importance of the standing issue and the Commerce Clause issues involved in this case--both to California and to the United

States as a whole, as well as the 11-year controversy between Petitioner and Respondents over this issue--it is incredulous as well as erroneous for Respondents to argue the petition is moot.

The issues were of such importance, and so non-impacted by subsequent statutory changes that the California Supreme Court exercised its discretionary jurisdiction to review the matters.

A. The Case Presents a Substantial Federal Procedural Issue on the Standing of Counties to Attack State Statutes

Respondents argue that Section 538 of the Revenue and Taxation Code makes the procedural issue unimportant for the future. The California Supreme Court disagreed with Respondents by exercising its discretionary jurisdiction and even used Section 538 to help support its

rationale regarding the federal rule of standing.

Even if Section 538 took care of County attacks on tax statutes,[1] such

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[1] Even in the tax area, the County has ignored Section 538. Petitioner has a case similar to the one involved herein (which is for the 1976 tax year) for 1977, 1978 and 1979 pending in the Los Angeles Superior Court. The latter case involves a tax year after the enactment of Section 538. Rather than use the statutory procedure of Section 538 for the 1979 year, the County continued to ignore the state statutory exemption in effect for that year, and to refuse to refund entirely the money involved, even after the Court of Appeal in California ruled the statute constitutional.

section does not address the ability of local governments to attack state statutes generally.

The California Supreme Court has misinterpreted the federal rule--finding a conflict between the Fifth and Ninth Circuit Courts of Appeal--and the State High Court created a new rule of federal standing based on federal district court decisions. This area of the law has awaited clarification from the United States Supreme Court for over 25 years and is clearly a substantial question.

B. The Case Presents a Substantial Federal Issue Involving the Commerce Clause

Because the California Legislature chose, four years after the tax year in question, to exempt all inventory from property taxation, Respondents argue that the critically important Commerce Clause issue, and the issue of what tax incentives the States may give in

structuring their tax systems has disappeared.

Again, the California Supreme Court disagreed with Respondents and, recognizing the later total inventory exemption, dealt with the Commerce Clause questions which were extremely important to California as well as the nation. Respondents cite no authority for, and are simply wrong, in arguing that the total inventory exemption was enacted as a result of the Section 225 problem involved herein.

In arguing the unimportance of the issue at hand, Respondents ignore, as the California Supreme Court did not, that "Over 35 states have adopted similar 'free port' laws, many of which extend tax-exempt status to stored imports (Star-Kist Foods v. County of Los Angeles 42 Cal. 3d 1, at 11.)

Respondents ignore the fact that there are other pending cases in the Superior Court in California involving these exact issues.

Respondents further ignore the fact that the highest court of California has determined a substantial federal question of importance to all state tax incentives and done so based on federal law and in a manner contrary to the position of the federal government as reflected in the Solicitor General's brief.

They ignore the direct and immediate impact on the unitary tax problem that California has resolved after years of controversy and at the prodding of the federal government. And they ignore the fact that if the Star-Kist decision stands, it will add uncertainty for years as to the legislative solution because under the California Supreme Court decision the

legislative scheme resolving the unitary tax controversy is unconstitutional. It is so only because the California court wrongly decided the federal constitutional issue.

To leave the Star-Kist decision in place not only places the unitary tax legislative solution in doubt, but renews the foreign relations controversy which this problem causes the United States.

It further affects the ability of states to have tax incentives which are valid under this Court's precedents. As Chief-Justice Elect Lucas wrote in dissent:

"I write separately because today's decision improperly precludes the Legislature from future use of this valid device to attract foreign commerce to California ports." (Id. at 16.)

II.

CONCLUSION

The case at bar is not a case where the issue between the parties is moot or where there is no case or controversy. Tiverton Board of License Commissioners v. Pastore 469 U. S. 238 (1985)). It is not a case where a federal court has made a decision based on state law due process defects involving a lack of a remedy that have been deliberately corrected by a state legislature and where the issue involved looking at the law at the time of review so that a remand to the court below would be appropriate. (Fusari v. Steinberg 419 U.S. 379 (1975))

The case at bar is not one where the decision of this Court would not

affect the rights of the parties. (U.S. Department of Justice v. Provenzano 469 U.S. 14 (1984))

The issues involved in this case are clearly not just academic (Rice v. Sioux City Cemetery, 349 U.S.70 (1955)) but issues of the highest significance for California, other States, and the federal government.

It is for this reason that this Court previously granted certiorari on these issues. It is for this reason that the California Supreme Court exercised its discretionary jurisdiction. It is for this reason that this Court should grant the petition

for certiorari and decide the extremely important issues involved.

DATED: 2/23/87

Respectfully submitted,

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